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SOME
THOUGHTS
Concerning the
STUDY
OF THE
Laws of ENGLAND.
Particularly in the
TWO UNIVERSITIES.

*In a LETTER to the Reverend —
Head of — College in Oxford.*

*Written by THOMAS WOOD, LL. D. and
Barrister at Law; Author of the Institute of
the Laws of England.*

THE SECOND EDITION.

L O N D O N:

Printed for J. STAGG, in *Westminster-Hall*;
and D. BROWNE, at the *Black Swan* without
Temple-Bar. M.DCC.XXVII.

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Some **THOUGHTS**
concerning the Study of the
LAWs of *England*, &c.

REVEREND SIR,

I Have received my Kinsman
from your hands, and thank
you for your Care of his Edu-
cation; particularly for that
Sense of true *Piety* and *Loyalty* with
which he is endowed. My Friends assure
me that the young Man can give a tolera-
ble account of the Old and New *Philo-
sophy*, and that he is not ignorant of the
Finesses in the *Classicks*.

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HE is designed for the Priesthood, and is now of Age to enter into Holy Orders. I encourage his Intentions, as suitable to his Genius and Inclinations ; and because a Noble Lord has promised to take him into his *House*, and provide for him.

BUT after all my Hopes that he may raise his Family, I must beg your pardon if I complain that he is very ignorant of the *World*, and of Mankind ; that he seems to have a positive, self-conceited, and despising way with him in every thing he says or does, for want of Conversation with wiser Men than himself ; and an inbred Contempt of two Things, the Knowledge whereof is almost necessary to give one a distinguishing Character. I mean a *general* Knowledge of the *Laws* of his Country, and some Insight into *Business*.

As to the *latter*, it is indeed of so comprehensive a Nature, that a Discourse on that Subject ought to be directed to those

those who have the Government of a Nobleman, that can bear the Expence of particular Tutors qualified for that purpose. For to instruct a Youth in the Knowledge of Men and Business, it will be requisite to teach him how to command his Temper, to be cautious and reserved, to reason well, to speak fluently, to converse inoffensively, and not to have a mean Opinion of any Man; to bear Insolence and Rudeness, Slander and Reproaches with Patience and Decency; and then, upon all Opportunities, to prompt him to make Observations upon every Man's Calling and Profession, (particularly in mechanical Trades and Husbandry) and to have some knowledge in the way of Bartering, and the Price of Commodities, &c. which will take up a Governour's whole Employ, and can scarce be thought a proper Undertaking for an University Tutor, tho' an acquaintance with one in each Profession would much forward this Knowledge of Business; and tho' this sort of Learning is of

more value than a thousand Systems of empty and fruitless Theories.

BUT my Kinsman is extremely ignorant even in dealing for what he wants; has no opinion of Frugality, is ashamed to cheapen any thing, gives every Man his first Price when he buys, and thinks all the World as honest as himself. And indeed many young Scholars know not the Value of their own Books, or of the Clothes which they wear; upon which account, the Education of a Youth in the Universities is much more chargeable than is necessary. And yet *this* Mischief might be prevented by the oversight of a common Tutor, and a few Instructions, without prejudice to his other Studies; and might tend to his Advantage in many respects, as well as be a means to invite Parents to send their Children to those learned Societies; who often dispose of them another way, as not being able to allow of so expensive an Education. This Learning (I say) of buying Necessaries wisely,

wisely, might be expected to be taught by those that have the Care of the ordinary Scholars; tho' Pains and Expence are requisite to teach the Knowledge of *Business* in a larger extent. Therefore I shall insist no longer on that Point, because there is no fault in your Government upon that score.

BUT for the *Laws* of our Country, they ought to have a part in the Education of an *English* Gentleman, for they come under the Topick of Learning, and ought to be ranged within the method of his Studies, to qualify a young Man to have some insight into *Business* too. Here then, I do blame your Constitution, that you have not yet been convinc'd of the necessity of teaching young Scholars the *Grounds* of that useful Part of Knowledge, which may be done without any extraordinary Trouble or Charge. I do not mean so much of our Law only as is to be collected from our *English* Histories, (Histories that delight and instruct at
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the same time in Civil Prudence, and the Knowledge of the Manners of our People, and yet are much neglected) but so much of it too as may lead one into the Rules of Right and Wrong in relation to private Property, without meddling with the wrangling or captious Part of it.

THOSE that intend to make the Law their *Calling* must constantly attend the highest Courts, otherwise it will be impossible to be Masters of the Practice, without hearing the Debates of the Council, and the Opinions of the Learned Judges upon it. But then considering that you have many Persons amongst you of the Nobility, who think themselves above the Study of the Common Law with the Ordinary Students in the Inns of Court; and others who care not to fetch that compass in their Studies, because of the Charge or Tedioufness of it; and others design'd for the Priesthood, who, by Custom, are in a manner barr'd those Societies; I wonder that such Youths
are

are not instructed in their Colleges at home in a *General* and *Compendious* Knowledge of our Laws, and the Reason of them, that they may understand what they hear or read upon that Subject; and that the Publick may have the benefit of their Academical Learning joined with it.

THE excellent Bishop *Stillington* hath shewn the way how Scholars ought to study the Law, and what progress may be made by a *private* Search. He hath written so accurately upon some Subjects of it, that none of the long Robe have hitherto pretended to correct him. His Argument in the House of Peers, (to settle Peace and Quietness in our Universities) upon the Case of *Philips* and *Bury*, concerning the Visitatorial Power, then an abstruse Question, was never yet answered; tho', for some Reasons, I believe, he had the assistance of an excellent Argument delivered in the *King's-Bench*, before he thought upon that Subject. If that worthy Prelate had had a due Respect paid

paid to his Skill in our Laws, he might have presided in our highest Courts of Justice with as much Reputation to the Publick, as ever any Ecclesiastick before him. And there are now some eminent Divines living, who have a great insight into the general Parts of our Common Law, from an Occasional and Private Enquiry into our Books.

IN the Universities there are publick Professors of the *Roman Law*, and Lectures read in the Schools upon some general Titles of it. And young Men think themselves obliged to read an *Institute* of the Imperial Law, and a (a) Comment upon the Title *De Regulis Juris*; and then to study (b) *Grotius* and (c) *Puffendorf*. Every one who pretends to be a Scholar, ought to read thus far in the Civil Law, and to know the best Books in that Profession. These two last Au-

(a) *Bronchurstius, or Peckius De Rego Juris.*

(b) *De Jure Belli & Pacis.*

(c) *De Jure Naturæ & Gentium.*

thors have drain'd out of many Volumes of the Civil Law, the greatest part of the Rational Learning concerning the Natural Rights of Mankind, which our *English* Lawyers do not disallow of. But if you go farther in this Study, have a care lest you take a Fancy (as too many have don) of bringing our Laws to the Standard of the Civil Law in *every Point*, and without enquiry what is in use or not; because it sets the Understanding of an *English*-man upon a wrong Biass, and makes him less capable of serving at home in many publick Stations. A Civil Lawyer in the House of Commons, in my Memory, was an Instance of this Truth, who, upon every Debate, would be amusing the House with Authorities out of the *Digest* and *Code*, and giving them to understand how matters have been heretofore managed in the *Rota*, or *Imperial Chamber*; whereas some of our own Lawyers think themselves as wise as *Papinian* or *Ulpian*, having the advantage of coming after them; and some of our Se-

nators as good Judges of Reason, and of what is proper to be done, as any foreign Assemblies, or Tribunals. The Civilian might have spoke more to the purpose, if he had cited Texts out of the Book of *Numbers* and *Deuteronomy*, and told them how Affairs stood formerly in the *Sanhedrim*. The Common Law has long since borrow'd almost all that's worth knowing from the *Romans*. The Niceties of their *Practice* is of no use. The most learned Advocates in our *Arch-Bishops-Courts*, very seldom cite Authorities in relation to *that* part; but after a plain Method of *Process* laid down, have an Eye upon the *Laws* of *England* in their Determinations, when plausible Reasons plead for them. So that this Study may be encouraged under the management of a Judicious Person, of one that is not a Pedant, or a Bigot to it.

THE *Canon* Law is also read and practised within the Universities: And even Divines think themselves under a

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necessity to read the *Institutes* drawn up by *Lancelot* or *Corvinus*, and to consult the *Decrees* and the *Decretals* with the chief Canonists for settling of Cases of Conscience, and to inform themselves in Church History. This Method also is so far commendable ; and if Divines would inspect the Registers of our Ecclesiastical Courts, and (a) *Clark*, as to the general Practice, they might be sufficiently qualified for the Offices in those Courts ; the Profits of which honourable Posts are often of necessity given to the Laity over the Clergy, (furnishing our Enemies with a specious Objection against our Ecclesiastical Government) because the Clergy are generally unfit for them. As to the common Business ; (b) *Lynwood*, (c) *Degg*, (d) *Godolphin*, (e) *Watson*, &c. are the Oracles which our best Canonists will vouchsafe to consult upon all occa-

(a) Praxis Francisci Clark in Foro Ecclesiastico.

(b) Gul. Lynwood Confit. Provincial.

(c) Parson's Counsellor.
Canonicum.

(d) Repertorium
(e) Complete Incumbent.

sions; and every Student may quickly learn the skill of turning to an *Index*, as well as the most celebrated Practisers.

SOME other Arts and Sciences taught in the Universities scarce deserve the pains and labour employ'd about them: The Nut is so hard or so dry, that it is not worth while to crack it for the sake of the Kernel. And certainly, That cannot be Learning, which is of no use to the Publick. We must do by these (while we grow in Years) as some do by their young University-Acquaintance, shake them off by degrees, and endeavour to forget them. For that which may be commendable in a young Wit, may be Impertinence in an old one. Learning which makes Men wise, is principally to be sought after: Or if we study *Words* at first, we ought to study *Things* afterwards. A prudent Man need not be ashamed that he has not spent many Years in turning over Books of Logical and Metaphysical Disputations, in composing *Greek* and *Latin* Orations,
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(Compositions in *English* upon Moral and Political Subjects, will be more useful) in sweating over the Poets, or in Versifying; in Criticisms, or searching out the various Readings on prophane Authors, in Chronological Niceties, or in some sort of *Greek* and *Roman* Antiquities, or on Subjects which have been always disputable, and will be to the end of the World. 'Twas a satisfactory Saying of *Themistocles*,—*That he knew how to raise a City from a low to a flourishing State, tho' he could not play upon a Fiddle.* Not but that some few may be allow'd to labour in such Amusements for their own satisfaction, (and that they might not employ their Parts to the disturbance of the Publick) or for the diversion of thinking Men, who are really Scholars; or to cure the Melancholy and Spleen of those that would be thought so. But three or four in an University are enough to set forth such an Entertainment; as every Town thinks it self well enough provided for, if it maintains only
but

but one Sett of Musick, whether good or bad.

SINCE then *other* Arts and Sciences of less moment are esteemed to be a part of Academical Learning; why must our own Laws, the *Common Law* of *England*, be banished thence, and young Scholars in a manner debarr'd that Study? It is infinitely of more use amongst us, even than the Civil and Canon Laws; for it is twisted and interwoven almost into all manner of Discourse and Business, comprehending almost all that is valuable with us in those Laws. And surely he was in the right, who advised (f), "To apply one's self more to necessary Studies, than to those for which we may seldom or never have occasion."

(g) To see Men of vast Study, and pretending to variety of Knowledge, not

(f) St. Evremond.

(g) V. Præfationem in Institutiones Juris Angl. per J. Cowel.

able

able to read one of our Records in the Original, or the Laws of their own Country in its proper Language; or to be ignorant of the nature of a Freehold, Fine, Recovery, or the way how Estates Real or Personal descend, or may be convey'd; or to talk impertinently and wide upon a *common Point*; it must of necessity create a mean Opinion of them in the Standers-by, and render them contemptible under the Smiles of a Solicitor.

BECAUSE of this Ignorance you may often hear our Lawyers say, That they had rather have any other Clients than Clergymen or Scholars; for they ask so many odd Questions, and will have a Reason for every thing in their own way: Whereas a good Reason in the *Schools* is not always a good Reason in a *Court*. And 'tis because of this one Defect why our Lawyers generally despise the Clergy, and think them unfit to be employed in any publick Station out of their ordinary Sphere; and that thence the Clergy,
(being

(being conscious of that Defect) raise in themselves early Prejudices against the Profession of the Common Law, as an Enemy to their Order; and very imprudently set themselves against those Persons whom they will never (as yet) be able to engage with success.

BUT to persuade young Scholars to the Study of the Common Law, after three or four Years spent in other Arts and Sciences, let them be inform'd, that if they qualify themselves to read *some* Reports or Arguments in our Law, they may learn from thence Plainness of Expression without Affectation; Perspicuity of Method; solid Reasoning without scholastick Niceties: And what better End can they propose by their *other* Studies? I may say of the Common Law, as an ingenious Gentleman has said of the Mathematicks (*b*), That it will accustom the Mind to Attention, give it a Habit of close Rea-

(*b*) *Essay on the Usefulness of Mathematical Learning, in a Letter to a Friend in Oxford. Printed 1701.*

soning,

soning, and free it from Prejudice and Credulity. Yet with this advantage beyond the speculative Part of the Mathematicks, that a *superficial* Knowledge of our Law will be more useful than *such* a Knowledge in the Mathematicks; which will scarce serve any other purpose than to tie and untie a Knot, or to furnish a Man with uncommon *Discourse*. One must be a Master of that Science, or else he will profit little by it.

It will be of great use to Scholars in their Colleges upon Debates concerning the Meaning of their Statutes, and the Power of their Visitors; for that the *Canon* Law is the only Rule to judge of them, or that Visitors may execute their Sentences with Ecclesiastical Censures, is an exploded Opinion. They will be directed also how to discourse more properly with their Tenants or their Council, and to manage the College Revenues with more Understanding, and to better Advantage. Their Governours have greater need of

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this Learning, because their chief Business is to direct in the *Temporal* Affairs belonging to their Societies.

MANY young Gentlemen of Estates retire early from the Universities into the Country, and are put into the Commission of the Peace soon after. Now if they are taught here no more than the Meaning of our Law-Terms and their Definitions, or to understand an *Act* of Parliament, they would be more serviceable to their Country in such Stations, and not led into ridiculous Mistakes by ignorant Clerks, as they too commonly are.

IF our Student enters at last into Holy Orders, and is taken into the Family of some Person of Quality as a Chaplain, he will have more Esteem there on this account, and be consulted in their secular Concerns as well as spiritual; whereas at present, (thro' the Irreligion of the Age we live in) such Men are frequently retained only for fashion-sake, and too often slighted as mere Scholars.

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IF he is prefer'd from thence, or the College, to a Country Benefice; a *general* Knowledge in our Laws will raise his Character in the Neighbourhood, and keep his litigious Parishioners in some awe. For they will be glad of occasions to invade his Right, and to make their Parson truckle to them, because they see daily that Clergymen are frequently frighten'd into unreasonable Compliances by the power of a sordid Patron, or Threats of others, being ignorant of the Advantages on their own side; dreading to swim far, for fear of sinking. An Arrest of a poor Vicar is a sort of an *Execution*; and the sight of a Writ is astonishing to him. But were Clergymen acquaintèd with the little Arts of Attorneys, or sensible of their Ways of raising false Alarms, they would not be so full of continual Fears and Distrust, and might apprehend that they were not so near Destruction and Ruin, as they are apt to imagine.

HERETOFORE Clergymen studied the Canon Law, when their Properties were subject to that Law; and now since our Temporal Courts have the Rule almost in all Cases, why is there not the same reason to study our Common Law?

OBSERVE, that I suppose my Clergyman to be upon his *Defence*, and to stand upon his Guard: I would by no means have him so confident of his Skill, as to *prosecute* for every Trifle, under pretence of suing for the Rights of his Church, and the Benefit of his Successors. No, nothing renders a Minister of the Gospel more odious to his People, than a contentious and a craving Temper. And if his Parishioners should once foil him at Law, (which, if swearing will do the Business, is not a thing impossible) they would despise him ever after, and make his Life uneasy. I put the Case as if he were under the *Necessity* of Prosecuting or Defending; and then I am confident that he will see no reason to

repent of having spent some time in reading the *Elements* of our Law and our Acts of Parliament, as to have Skill enough to understand what he reads in our common Books or our Statutes; or to put his Case right, and to apprehend the Opinion of his Council, or the Method how to proceed upon a probable or sure Bottom.

A *general* Knowledge of the *English* Laws will make him very useful amongst his Parishioners, not only to support them against the Oppression of others, but to determine common Controversies by way of Arbitration amongst them. The Country Farmers often disquiet themselves and others upon mere Fancy, and squander away their Time and Money for Advice upon very obvious Matters relating to their private Concerns; but a little plain Law-reasoning may compose their Minds, and convince them. As this will be a Minister's Duty, so he will gain the Love and Esteem of his Flock by it. But be sure, let him do all this for God's sake, and never accept

cept of a Fee or Present for his pains ; as necessary to avoid all Suspicion of Covetousness or Desire of thrusting his Sickle into other Mens Corn. However, the Abuse of good Things can be no Argument against the true Use of them.

CLERGYMEN ought to study our Law for their own sakes too, because no Men in the Nation are under so many Forfeitures and Temporal Obligations, or tied to the Observance of more Laws, Ecclesiastical and Civil, than themselves. Passing over the Laws which they are bound to observe in common with other Subjects : Let any one read the (a) *Statutes of Uniformity*, to qualify himself for Institution and Induction into a Benefice ; and I believe he will be satisfy'd that the Knowledge of some Law is necessary to apprehend their Meaning. I never heard of any Man that perform'd all (that seems

(a) 2 & 3 Ed. 6. 1.— 5 & 6 Ed. 6. 1.— 1 Eliz. 1, and the 2.— 5 Eliz. 1.— 13 Eliz. 12.— 14 Car. 2, 4.— 1 W. & M. 8.

to be required) *exactly*. It is to be wish'd that these Acts were all thrown into one plain Statute, for as they stand, they are so intricate, that they are become mere Snares upon the Clergy : The most zealous Conformist to the Doctrine and Discipline of our Church have been ousted of their Titles for some small Defects and Omissions, which could never be the Intention of our Legislators. Let any one also read the (b) *Test Act* ; the *Acts* concerning (c) *First Fruits*, and *Tenths* ; (d) *Simony* ; (e) *Residence* ; (f) the *Fifth of November* ; (g) the *Twenty-ninth of May* ; the *Act* against (h) *Cursing and Swearing* ; the *Statutes* concerning (i) *Marriages*, *Births* and *Baptisms* ; (k) *Burials in Woollen* ; concerning (l) *Briefs*, (m) *Beggars*, &c. besides *Proclamations*, *Injunctions*, *Canons* and *Constitutions* al-

(b) 25 Car. 2. 2.— (c) 26 H. 8. 3.— 27 H. 8.
8.— 1 Eliz. 4.— (d) 31 Eliz. 6.— (e) 21 H. 8.
13.— 28 H. 8. 13. (f) 3 Jac. 1.— (g) 12 Car. 2.
14.— (h) 21 Jac. 20.— 1 W. & M. 18.—
(i) 7 & 8 W. 3. 35.— (k) 30 Car. 2. 3.—
(l) 4 & 5 Annæ.— (m) 39 Eliz. 4.—

most

most innumerable ; and he will be of my Opinion, That those Laws ought to be studied by the Beneficed Clergy ; and that they do require some Industry to understand them, and avoid their Penalties.

P E R H A P S the Higher Powers may think it convenient to put a Clergyman into the Commission of the Peace ; this gives him more Credit and Authority, especially if he has equal Knowledge in his Duty with the rest of his Companions. However, this affords him an opportunity to converse with the best Men in the County, at the Assizes and Sessions, and to improve his Study, and thereby to be able by his Skill and Interest to protect his Brethren of the Clergy, and others, from any hard Usage or Oppression. If he is cautious in his private Conversation with the Gentry here, and of a merciful and healing Temper, in all probability he may have some influence.

T H E Business of a Country Justice may be understood without much difficulty :

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(a) *Dalton* (to be consulted when a Case offers) will sufficiently instruct him in the Law concerning *Felonies, Hue and Cry, Forcible Entries, Bail and Main-prize, Breaches of the Peace, and Good Behaviour, Settlements of the Poor, Bastard Children, Parish Rates and Taxes, Cottages, Highways, Ale-Houses, Game, Constables and Overseers, Lord's-Day, Swearing and Cursing, Drunkenness, Vagrants, Watch and Ward, Wag-gons and Carts, or the like common Bu-siness.* (b) *Nelson* will furnish him with good *Forms* for *Licences, Warrants, Mit-timus's, Recognizances, Orders, Passes, &c.* when the Law is to be put in execu-tion *out* of the Sessions; as other (c) com-mon Books will give him some Directions for the Business to be done *within* it.

AND now methinks it is no such disa-greeable sight, (as some imagine) to see the Laity and Clergy, (*Moses and Aaron*)

(a) *Dalton's Country Justice.* (b) *Nelson's Office of a Justice.*— (c) *The Office of Clerk of Assize and of the Peace. Officium Clerici Pacis.*

fit upon the Bench together in a Court of Justice. Probably it had been more for the Interest of our Clergy, if the Bishop of the Diocese and the Elderman had continued to sit together in the same Court to this day, as they did till the 21st Year of *William the Conqueror*.

IF some of the Inferior Clergy were return'd and impannelled upon Juries in Causes that concerned the Rights of the Church, (as they are upon Tryals of a *Jus Patronatus* in the Spiritual Courts) I see no Absurdity in it. They cannot be forced to it, but they may consent and wave their *Privilege*. Sure I am, that Experience shews it to be folly to trust those Causes wholly to a Lay-Jury; half of which, too often, are Dissenters to the establish'd Church, or Well-wishers to them. They will be put into better hands, if Clergymen (acquainted a little with Law-Affairs) were mixed with them.

THE Country Clergy will never live in credit or esteem, till some of them are
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invested with more Power and Interest in Civil Affairs, or more of them put into the Commission of the Peace. Where the Clergy are slighted, Religion will be slighted too. Now the Rusticks know no difference betwixt Parish-Priests. In their Opinion all are equally deserving, except where there is gross Immorality. Those that live with the greatest Hospitality *sometimes* fare the best. But as for retired Sobriety, deep Learning, solid Preaching, private Instruction, &c. without Authority; these are Virtues which seldom create any real Respect amongst the *generality* of them, but are often misconstrued into Covetousness, Hypocrisy, ill Nature, and a troublesome Behaviour. They will judge only by external Appearances in their Families, and the Interest they have in the Country. So that if some Clergymen were armed with a little Power to punish extraordinary Extravagancies, the Clowns would value them and be sooner brought to live regularly, than by good Example, or Religious Advice only. These will not fill their Bellies, or empty their Pockets.

They *love* where they can get, and *fear* where a little of their Money may be in danger.

IF a Clergyman is prefer'd to a higher Post, let him be assured, that there is no understanding our Constitution without some knowledge in our *Common* and *Statute* Laws. He must have studied the *Prerogative*, as well as the *Liberties* of the People, and their Rules concerning *Property*; for after all the Schemes that are laid down to make us a happy Nation, the Clergy in a more particular manner are concerned to support the Monarchy in its just Rights, as their truest Friend. In a word, no Man must pretend to govern well here in *England*, unless he takes our Laws for his Guide: And particularly my Lords the Bishops will find the Advantage of this Knowledge in governing their Diocesses at home, by being informed in the true Extent of their own Power in their *Palaces* and in their *Courts*, and how to defend their Jurisdictions; whereas for want of this Learning, some of them heretofore

tofore have frequently fell into great Mistakes, making themselves liable to Actions, or else have been often defied by most notorious Offenders, who escaped punishment by discouraging them with Processes out of the Temporal Courts; topping upon those about them, who wanted Skill and Ability in our Laws to advise and manage the Proceedings against them.

UPON these Accounts the Study of our Laws is to be recommended to the Universities for the Education of your Youth; especially for those who design for Holy Orders, that they may be put in a way to make farther Improvements, to claim their Rights, and to defend themselves in the several Stations which they may be afterwards called to.

BUT if Temporal Considerations will not have any Influence, let it be enquired whether this Study will not very much contribute to their Knowledge in Divinity; I mean, as to the Casuistical Part, and the

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Resolutions of Cases of Conscience : For oftentimes our Duty towards God is to be regulated by the Determinations of human Laws; which will make that to be Reason *now*, which was not so before that Determination. For Example, The eldest Son shall inherit his Father's Lands at the Common Law ; and if no Sons, all the Daughters equally : in *Burrough English*, the younger Son shall be Heir ; and in *Gavel-kind*, all the Sons together shall inherit the Land, as Daughters at the Common Law. Now if the Question is asked, How ought Lands to descend according to Conscience ? The Law gives Directions. Conscience gives it to the eldest Son in one County ; Conscience gives it to the youngest in another ; and Conscience gives it to Sons or Daughters share and share a-like in a third. And so Conscience ought to follow the Determination of Law upon this following Question, *viz.* A Man seiz'd in Fee hath a Son, and makes his Will, and devises the Estate to his own Father : The Will is written with the Testator's own Hand, subscribed with his Name, sealed with

with his own Coat of Arms, and published in the presence of *two* Witnesses. The Son notwithstanding enters upon the Land as Heir, and insists, that by an Act of Parliament 29 *Car.* 2. there ought to be *three* Witnesses at the least to every Devise of a Freehold. I take it to be very clear, that the Son is not bound to submit to his Father's *Intention*: For as the Will is void in Law, so it lays no Obligation upon him in conscience to submit to it. And therefore I have often reflected upon the Mistakes of some good Men, who have perplexed others with Doubts and Scruples about their Title to their Estates; urging the *Design* and *Intention* of Testators; and calling upon Equity and Conscience in opposition to the Decisions of Law, as if Conscience and Reason were never to be ruled by it.

BUT as an Answer to all this which is advanced on behalf of the Clergy, upon a Supposal, that they may be now and then a little more concerned in a share of the Civil Affairs: Some over-righteous Men,
(who

(who think it convenient to keep the Clergy low) will tell you with great Demureness, " That Clergymen have Business enough to do if they mind their Cures only ; that he who has the Care of Souls, may spend all his Time in Reading, Meditation, Prayer, Preaching, Catechising, and Visiting the Sick : Upon which account the Apostles declared, they would not leave the Word of God and serve Tables ; tho' that Employment was an Office in the Church." To this effect an (a) Author, who speaks the Sense of a Party. The former part of this Argument may as easily be turned against Lawyers, Soldiers, and Tradesmen ; they have Business enough in their own Callings. But to give a plain Answer : To *leave* the Word of God and serve Tables, would be to desert their Cures. For those who served in that Office were the Treasurers of the Church, and kept the common Stock ; and those Estates which were laid at the Apostles Feet, to distribute them to

(a) *A Letter shewing Bishops are not Judges in Parliament in Cases Capital. Printed Anno 1679, pag. 4.*

the Poor, as they saw occasion; which Office the twelve Apostles could not discharge without other Assistances. But cannot we spare a few Clergymen out of fifteen thousand, to look now and then into a Law-Book; or some few in a County to go sometimes for two or three Days to the next Market-Town, to consult with their Lay-Friends, for the good Government of the Neighbourhood, without forsaking their Callings? The Clergy need not forsake their Cures or spiritual Affairs, or do any thing inconsistent with their Function by such a Study, or by some sort of secular Employments; for at such times they are promoting the Interest of Religion, by studying how to defend it, and serving God in regulating Mens Manners thro' Justice or Mercy.

THE Apostles lived under Heathen Princes, and could not be employed in Temporal Offices under them without Scandal to Christianity; but now when Kings themselves are Christians, the Clergy invested with Civil Authority, have great Opportu-

nities to advance the Gospel, and maintain the Government of the Church. And if some of the Fathers have shewed their dislike of employing Clergymen in secular Affairs, their Notions seem to have been calculated for a monastick Life, which can have no force in a Protestant Country. Ecclesiastical Persons may as well be debarr'd to have any Temporal Estate, or to be Executors or Administrators, Guardians or Trustees. But to look higher : (a) Suppose one of the Blood Royal was a Clergyman, and the Crown should descend to him, he may execute both those Offices, and be God's *Anointed* in both. Before the Law, *Melchisedeck* was King and Priest. And it was never thought a Crime in the *Jews* to give Commission to their Priests to be even Generals in War, and Governours of Provinces. Under the Law, Controversies were to be decided, by the Priests and Judges, *Deut.* 17, and 19. *Eli* was both a Priest and a Temporal Judge ; and *Esdra*s, after the Captivity, was both a Priest and chief Governour in secular Affairs.

(a) See Hooker's Eccles. Pol. Book 7. Sect. 15.

Our Saviour indeed refused to give Judgment in a *criminal* Cause of Adultery, and in a *civil* Cause, about dividing an Inheritance; but he did this to convince the *Jews*, that to be a King was no part of the *Messiah*, and because he was a private Person, and had no such Authority in that Commonwealth. But St. *Austin* is so far from thinking it unlawful for a Bishop to judge in Civil Causes, that he infers from 1 *Cor.* 6. a necessity for him to undertake that Duty. Truly, where a Christian Society is planted amongst Hereticks, or Schismatics, it is of necessity that the Clergy should accept of a share with the Laity; and then if the Civil Affairs are such wherein Civil and Ecclesiastical Offices may be united in the same Person, without prejudice to either of those Employments, I cannot find any reason why Clergymen should be totally excluded.

THE same (a) Author intimates, " That
 " several Laws have been made to restrain
 " the Clergy from exercising secular Em-

(a) Idem, pag. 4

“ ployments. The Emperors *Honorius*,
 “ *Theodosius*, and *Justinian* have prohi-
 “ bited the same by the Civil Law ; and
 “ the Common Law of *England* too
 “ seems to discourage it, as appears by a
 “ special Writ in the *Register*, providing
 “ that a Master of an Hospital, being a
 “ Clergyman, should not be chosen an
 “ Officer in a Mannor, to which that
 “ Hospital did belong, as *contra Legem*
 “ & *Consuetudinem Regni & non Conso-*
 “ *num.*”

ILL agree that Clergymen ought not to
 be Shopkeepers or Farmers, or to inter-
 pose in any *such* secular Affairs ; nor to
 be Bailiffs or Constables, nor to serve in
 any mean Offices ; and that a Rescript of
Honorius, and *Theodosius*, and a Decree
 of *Justinian*, seem to be against their in-
 termeddling in any secular Affairs at all :
 Nay, That the *Canon Law* speaks to the
 same purpose, as also a Constitution of
 (b) *Othobon*. But this does not prove that
 the Clergy ought not to study the Law,

(b) c. Cum Honeffatis.

And

And if the Civil and Canon Laws prohibit them to bear secular Offices, Positive Laws are not immutable. But what signify these Imperial Laws, and these Canons here in *England*, if they were never *received*, or incorporated into the Body of our Common Law? Or if they are contrary to the Law of the (c) Land? (d) *What will become of the whole Frame of our Government, and of our just Rights and Properties, if the producing of Imperial Edicts, (I say the same of Canons) would be sufficient to overthrow them?* Yet (e) *Constantine*, (before the Papal Power was advanced) suffered the Bishops to try all manner of Causes, which concerned either Clergy or Laity, upon Appeals from the Civil Magistrate. Upon (f) which, the Constitutions *De Episcopali Judicio* in the *Theodosian*, and that *De Episcopali Audientiâ* in the *Justinian Code*, were founded. And the Gloss upon the (g) Novels of *Justinian* ob-

(c) v. *Articuli Cleri*, ch. 8.
Cases, 2d Part, ch. 1. pag. 241.
 Lib. 1. c. 9. (f) *Eccles. Cases*, 2d Part, 242.
 6. Cap. 2.

(d) *Stilling. Eccles.*
 (e) *Sozomen Hist.*
 (g) *Nov.*

serves,

serves, That Bishops, (the Case is the same of other Clergymen) may concern themselves with the Affairs of the Commonwealth *(b)* when their Prince calls and commands them.

As to the Restraint of the Clergy by the *Common Law*, it is to be observed, That the Writ in the Register *exempts* the Clergy from mean Offices, for the Honour of the Church ; but does not *prohibit* or restrain them. Neither Common nor Statute Law exempts or restrains them from secular Employments of *Credit*. Nay, our Laws do allow Episcopal and Archidiaconal Jurisdiction to Clergymen, to punish even Laymen for Crimes not only of a spiritual Nature, as Incest, Adultery, Fornication, Heresy, &c. but to try Causes between Laymen in temporal Matters, touching Wills, Legacies, Defamation, &c. and to license Surgeons, Midwives, and School-Masters. By our Fundamental Constitution, Bishops are Members of the Upper House of Parliament, who in

(b) So *Constit.* Othobon. c. cum Libertatis.

concurrence with the Lay Peers, try all Causes upon Writs of *Error* out of the *King's-Bench*, and *Appeals* from our Courts of Equity. And all this is very reasonable, since our Church has been united and incorporated into the Civil State. For the Clergy ought to have a share with the Laity in the governing Part, where the Rights and Freeholds of the Clergy as well as Laity are concerned in it. (a) And I believe there is scarce any Monarchy in the World where the Clergy are excluded from it. 'Tis true, (b) "The
 " two Houses complain'd in the 45th Year
 " of *Ed. 3.* against Clergy Officers in the
 " Government; and that such Allow-
 " ances might hereafter tend to the disin-
 " herison of the Crown, and great preju-
 " dice of the Realm, and therefore they
 " pray the King that he would employ
 " Laymen." This was a very seasonable Complaint, when the Pope maintain'd his usurp'd Authority over our Monarchs by this Practice. But are our Clergy now

(a) Vide *Eccles. Cases*, 2d Part, 235. (b) *Letter*, &c.
 p. 106.

under Oaths to support the Pope's Supremacy? Is it the Interest of our Clergy to destroy our Monarchy, or to subject it to a foreign Power? When that is the Case, I will concur with the Enemies of the Clergy to petition again to remove them, and that they may not be trusted out of the Bounds of their Parishes. But as the matter stands at present, an exclusion of the Clergy may rather promote the Pope's Business, by dividing the Interest of the Church from that of the State; tho' the Reformers in 1641 did not see into this dangerous consequence, when they prevailed upon King *Charles* the First to disable Clergymen, by Act of Parliament, from exercising any Temporal Authority or Jurisdiction. However, the Clergy have the Law *now* on their side, and that Act of 41 was repealed upon the Restoration, by the 13 *Car. 2. chap. 2.* And I believe no one will oppose their having a small share in some Civil Employments, but those that desire to trample on them; or that under a shew of inveighing against the Grandeur of the Church of *Rome*, and the

the Ambition and Pride of its Clergy, really hate that a Protestant Clergy should live in any Credit. Nay, it is manifest enough that even the Clergy (as they are called) amongst our Dissenters, who are great Sticklers with some of our own Laity against such Allowances, do themselves exercise *Civil Authority* over the respective Members of their Congregations with a high Hand, though they call it *Spiritual Power*, or disguise it with another Name. But if there must be a distinction in the Exercise of these two Powers, why must mere Laymen amongst them exercise *Spiritual Jurisdiction*, and our Clergy be excluded from the Exercise of *Civil*?

DID I propose any thing to gratify Ambition, or that would turn to the prejudice of the Ministerial Function, I should abhor the thoughts of it ; but if I aim at nothing but the Credit of the Clergy, their spiritual and secular Interests, and that they may be made capable of such Employments as are allow'd by Scripture, and the Practice of the Church from the Time of

Constantine ; and all this for the benefit of the State as well as of the Church : I cannot be persuaded but that good and wise Men of the Laity will be pleas'd with such Assistance in their Civil Affairs, and with such an Union of Persons and Interests, which our Enemies desire should be always divided.

HOWEVER, submitting this Question concerning the Capacity of spiritual Persons to act in Temporal Matters, to the Determination of our Superiors, I only beg leave to advise your Youth design'd for Holy Orders, to make the *Laws* of *England* part of their Studies, for the many Reasons which I have hinted at. And therefore to look back upon the principal Subject, I shall proceed, from a Persuasion to study the *general Knowledge* of the *Laws* of *England* in the Universities, to give some Hints how that Study may be carried on amongst you, (for the present purpose) with as little pains as many other of less use. And herein I shall only represent to you the Thoughts of some considerable

siderable Lawyers, whom I have discoursed with upon this Subject; not presuming to trust to my own Judgment in so nice a matter.

IT is to be much lamented, that we have not any complete *System* of our Laws. We are forced to learn it chiefly by Tradition, and Observations upon the Practice of it in the highest Courts. But for want of such a System, there have been several Methods recommended to young Beginners, who do not design to make the Law their Profession. Amongst others, it has been advised to read first of all, *Finch's Discourse of Law*. This is the most methodical Book extant that ever was wrote by one of our Profession; it almost follows the Method of *Justinian's Institutes*. For having by way of Introduction treated of the Law of Nature and Reason, and of positive Laws; he discourses, 1. Of *Persons taken notice of in the Common Law*. 2. Of *Rights and Possessions*. 3. Of *Offences*. 4. Of *Courts of Judicature*, or of *Original and Judicial Procefs*. Indeed

(say they) if this Book was revised by marking what is *antiquated*, and by adding the *new* Statutes with References to *Coke's Commentary on Littleton, &c.* a Youth might have a good System in his Mind in a short time. However, let *Wentworth's Office of an Executor*, and *Hale's Pleas of the Crown* be read in order when the Scholar reads of *Testaments*, and of *Offences*, in the second and third Books of *Finch's Discourse of Law*. That Book under the Name of *Wentworth* may be relied on, while *Swinburn* and *Godolphin* of *Testaments* (being Mixtures of Common and Civil Law) are not always to be trusted. For the farther understanding of some other Chapters, there are many Books of late published upon *particular* Subjects, as in other Arts and Sciences, which may be cursorily consulted where the System is too short or difficult.

BUT after all, *Littleton's Tenures*, with *Coke's Commentary*, (at least as far as the Text is directly explained) must be read and studied, if the Student intends to

proceed upon a sure Bottom. For to those Books, and the rest of *Coke's Institutes*, the Scholar must be always turning, they being the best Authorities in our Law. *Coke* need not to be followed in his Digressions and Variety of Cases; for it is not designed to make our Student as great a Lawyer as himself: But whatever is read, the Student may always keep *Finch's* Method in his Mind, and upon a review reduce all to his Order. This will enable him to improve himself by Discourse and by Conversation with Attorneys and Lawyers.

It is adviseable to get a Common-Place-Book, after two Years are spent in the course of Reading, to enter the Abstract or Substance thereof under proper alphabetical Titles. *Rolls* or *Danvers's Abridgments* (a), &c. will be of great use to him; where, with his own Collections, he may ever after see at one View the general Cases concerning any one Subject.

(a) *Abridgments* by Brooks, Fitzherbert, Hughs, and Shepherd.

ALL

ALL Methods suppose that you have the *Statutes* abridged by *Wingate* and *Washington*, &c. as also *Cowel's Interpreter*, or *Blunt's Dictionary* to explain the *Law-Terms*, and *Fitzherbert's Natura Brevium* to be occasionally informed in the Nature of the common *Writs*, which are mentioned or refer'd to.

AMONGST our *Statutes* or *Acts* of Parliament, have a particular Eye on the Statute of *Tenures*, enacted the 12 *Car. 2.* and the Statute of *Frauds* and *Perjuries* made the 29 *Car. 2.* For much of the Law is alter'd by them since *Littleton*, *Finch*, or *Coke* wrote. And so regard must be had to those Acts of Parliament which are of daily use. Such are the Statutes, (to take them in an alphabetical Order, as in the Abridgment) concerning *Administration of Intestates Estates*, *Bail and Mainprize*, the *Crown*, *Distresses*, *Election*, *Fines*, *Habeas Corpus*, *Informers*, *Judicial Proceedings*, or *Amendments of the Law*, *Limitation of Actions*, the *Enabling and*
Dis

Disabling Statutes concerning Leases, the Statutes concerning the Dissolution of Monasteries, Officers and Offices, Recoveries, Residence, Service and Sacraments, Tithes, Uses and Enrollments, &c.

AT the first entrance on Study, let the Student be taught what *Titles* of the Law are least in use, to save him an unnecessary Trouble: If this is observed, the Learning will not be so difficult or tedious, as is commonly imagined. Sir *Matthew Hale's* Preface to *Rolls's Abridgment* will inform him,

THAT the Title of *Dower*, and its several kinds, (as *ad ostium Ecclesiæ, &c.*) is neglected by the common Use of Jointures (a).

THAT The Titles of *Homager, Fealty, Escuage, Homage Auncestrel*, may be but cursorily read over.

THAT *Tenures* by *Knight Service*, and its Appendixes, as *Wardship, &c.* are

(a) 27 H. 8. c. 10.

all become useless by the (b) Act of *Alteration of Tenures*.

THAT *Tenure in Villenage*, and the several Appendixes thereof, are now also antiquated.

THAT the Titles of *Profession* and (c) *Deraignment* are wholly taken away.

THE Learning touching the Title of *Rents* now depends much upon the Statutes of *Distresses*, particularly upon the 2 *W. & M.* chap. 5. which is an Alteration but of late.

THAT Preface will acquaint him that the Title of *Descents*, to take away *Entries*, and *continual Claim*, is very much abridged by the 32 *H. 8.* ch. 33.

THAT the Title of *Attornment* was a difficult Title with its Appendixes, *Quid Juris clamat, quem redditum reddit, per quæ servitia, &c.* But it grew almost obsolete by the Invention of *Fines to Uses*,

(b) 12 Car. 2. 24.

(c) 27 H. 8. 31 H. 8.

by *Bargain and Sale*, by *Lease and Release*, and by *Deeds enrolled*, according to the Statute 27 *H.* 8. ch. 16. which also supplies the Difficulties of Execution of Estates by *Livery and Seisin*. And indeed the Learning of *Attornments* is now wholly rendred useless by the 4 & 5 of *Q. Anne*, entitled, *An Act for the Amendment of the Law*.

SOME kind of *Releases* and *Confirmations* are also supplied by the afore said new Inventions.

THE Titles of *Discontinuance* and *Remitter* are mightily abridged by several Acts (a) of Parliament.

AND thus the Title of *Warranty* need not take up much study of our young Scholar. *Warranties* of *Tenant for Life*, and *Collateral Warranties*, are made void by the 4th and 5th of *Queen Anne*.

(a) 4 *H.* 7. 24. 32 *H.* 8. 36. 11 *H.* 7. 20. 1 *Eliz.*
13 *Eliz.* ch. 10.

By this time you may see that *Coke's Commentary on Littleton* is shrunk up to one third.

It will save the young Scholar a great deal of pains, and make his Study easier and shorter yet, if he is acquainted betimes, That the Remedy by *Affizes*, and their several Forms and Proceedings, are out of use in recovering Possessions; and that *Ejectments* are come into their place. *Affizes* are seldom brought, unless for recovering Possession of *Offices*. *Real Actions*, as *Writs of Right*, *Writs of Entry*, &c. and their several *Appendixes*, are now also out of use. It is a shorter way to recover Possessions by *Ejectment*. Only in *common Recoveries*, the Form of such *real Actions* is preserved.

THE usual Methods of Tryal at this day, are by *Ejectments* for Possession of Lands, *Quare impedit* for a Disturbance in a Title to a Rectory, &c. And for Recompence in Money we make use of *Ac-*
tions

tions upon the *Case*, (in *Trespass*, *Assumpsit*, *Trover* and *Conversion*) *Action of Covenant*, *Debt*, *Trespass*, *Vi & Armis*. See farther of the *Alterations* in the *Common Law*, *Hale's Preface* before-mentioned; where you may also find a *Reflection* upon *University-Learning*, and what improper Judges such Scholars are of the Reasonableness and Study of the *Common Law*. But, Sir, I am endeavouring now to prevent these *Reflections* for the future.

As for the Forms of *Pleadings* in our Courts at *Westminster*, there are several modern (a) Books which will shew the Student *Precedents* from the *Original Writ* and *Declaration*, to the *Writs of Execution*, and *Writs of Error*, with which he need not trouble himself any more than with a bare perusal to compare these *Entries* with the Subject he reads on; perhaps they are not exact, but they will serve his turn.

(a) *As Instructor Clericalis*, &c.

BUT as to *Practice*, the Statutes of *Jeofails*, *Judicial Proceedings*, and *Amendments of the Law*, will shew how much the old Niceties in form are taken away, to prevent any laborious Enquiries on that heavy Subject, 8 *H.* 6. 12 & 15. 32 *H.* 8. 30. 37 *H.* 8. 8. 18 *Eliz.* 14. 27 *Eliz.* 5. 21 *Jac.* 13. 16 & 17 *Car.* 2. 8. 4 & 5 *W. & M.* 18. 10 & 11 *W.* 3. 14. 4 & 5 *Annæ.*

SIR Orlando Bridgman's *Conveyancer*, Billinghamst's *Arcana Clericalia*, &c. will acquaint you with the *Order* and *formal Parts* of a *Deed*, and the several *Forms of Conveyances*.

AND thus for the Practice of the *High Court of Chancery*, there are several modern (b) Books drawn up for the use of young Clerks, which will instruct the Scholar in the Form of a *Subpæna*, *Attachment*, *Proclamation*, *Commission of Rebellion*, *Bill* and *Answer*, *Plea*, *De-*

(b) *As Clerk's Tutor*, &c.

murrer,

murrer, Replication, the Form of an Order, Affidavit, Interrogatory, Commission to examine Witnesses, &c. Deposition, Decree, and Sequestration. There are also *Reports of Chancery Cases*, lately published, which may be of use.

WITH these Instructions, Furniture, and Expence, a young Scholar in the University may gain a tolerable Insight into our *Laws*, and a general Notion of our way of *Practice*, and be able hereafter to understand our *Reports* which are most reasoning, when he desires to be satisfied in the Judgment or Decision upon any Case occurring in the course of his Enquiries. Heretofore it was thought most adviseable to begin with the *Tear Books*, and the *oldest Reports*; but now because of the great Alterations of our Laws, it is thought most proper for a Student to begin with the *latest*; or if he cares not to go any farther, he may depend upon the great *Abridgments* before-mentioned, and follow their References to a Report, when he has a mind to read upon

on his Case at large. A Method which no wise Man would propose to one that designs for the Bar, because it is too superficial. It is offered as a Method to a private Tutor only, or a young Scholar in our Universities, who designs for another Profession, or no Profession at all, that he may be something inform'd in the nature of the Laws, under which he lives.

THE *Chancellor's Court* in your University might be so regulated, as to conduce very much to *improve* this Study. Your Fondness for the *Civil Law* upon *all* occasions is very unaccountable, and of very pernicious consequence. The Oath of your Judges is, to determine according to the *Laws, Statutes, Privileges, Liberties and Customs of the University*, without any *special* Direction to observe the *Roman Law* in their *Sentences and Decrees*. The Charters mention nothing of the *Civil Law*, but give the Judges leave to try Causes either according to the *Statutes, Privileges and Customs* of the University,

versity, or pursuant to the (*b*) *Law of the Land*, at Discretion. Now does not your Constitution give liberty to take in the *Common Law* with your *Statutes* and *Customs*? The present Strictness of a *Civil Law* Practice is to no rational purpose, and of very little use elsewhere. And tho' the *Process* ought to be by *Libel*, (as your *Statutes* require) yet the further Proceedings must be (*a*) *Summariè, simpliciter, & de plano*, (*b*) *absq; strepitu & figura Judicii*, and (*c*) *sola rei veritate inspectâ, &c.* (*d*) In *Criminal Causes*, 'tis sufficient if the Register sets down the Accusation in an *Act of Court*. If this is so, what a deal of formal Trifling and Expence has there been upon the Admission of *Libels* and *Articles*, and upon the Doctrine of Nullities!

(*b*) Vide the *Charters* 14 H. 8. and the 11 Car. 1.

(*a*) Vide Stat. De Officio & Autoritate Vicecancellarij, Tit. 17. Sect. 3. (*b*) Vide Marantæ Spec. Aureum, Dist. 9. Num. 11. Quid importent illa verba sine figura Judicii, cum seq. (*c*) Idem. Num. 32. Quid importet illa clausula — *Sola facti veritate inspectâ.* (*d*) Stat. Oxon. Tit. 21. Sect. 10.

YOUR

YOUR Statutes are plain and certain Rules of Government, and easy to be understood by an honest Mind ; but if you give ear to unnatural Distinctions, Fetches and Shifts, and to the Variety of Opinions from every Writer in the Civil Law, there is nothing to be expected, but an overthrow of your Discipline ; nothing but Uncertainty and Inconsistency. But this may be prevented hereafter, if you have more regard to upright and manly Reasoning, and to matter of *Substance* in all Debates and Tryals, and to the Laws of *England* in your *Decrees*, when your Statutes are silent. Those are particular, certain, and uniform. 'Tis true, a regard ought to be had to the Laws in the *Digest* and *Code*, (the Civil Law is wholesome, if taken with Moderation) or to the Opinions of *Bartolus* and *Baldus*, and the learned *Commentators* upon those Laws. The Decisions of the *Chamber* and the *Rota* shall be always thought on with great esteem, for their *Reasons* are oftentimes very admirable ;
but

but what is their bare *Authority* without a Reason, or their way of *Practice* to us? As for their Reasons too, and Force of Argument, we see the *Roman Law* is much alter'd in all Countries since it was first collected by *Justinian*; and that there is a learned War amongst the *Interpreters*, about the Equity of those Laws, as any one that consults the Books *De LL. Abrogatis*, or *De Jure Novissimo*, *De Opinionibus communibus contra Communes*, *De Moribus Hodiernis*, &c. may be fully convinc'd. Besides, the common Lawyers as much magnify the Wisdom of our *own Law*, where it differs from the Civil Law, and are ready to maintain, That nothing can be the Common Law of *England*, but what is consistent with right Reason, and the Law of God. They are willing to be tried by those Tests, and to enter into a Comparison. However, the Laws of *England* must prevail here, and old *Littleton* and *Coke*, (tho' despised by those that do not understand them) will keep up their Characters; because by their Reasons Property must at last be decided. Why then all

this Dotage upon every part of the *Roman Law*?

By the Civil Law, a Judge may be *refused* if you do not like him, for (a) one and forty Reasons. But the Law of (b) *England*, and your own Constitution, cannot bear this Law. Your Discipline will be overturn'd by such an Allowance; for who shall controul or act in the stead of your Chancellor or Vicechancellor; or correct or imprison him, if he will not be refused?

By the Civil Law, a Man's Servant cannot be a Witness for him, nor a Son for a Father, or *vice versa*; nor any one that is near of kin to him; no one is of full Age till Five and twenty; Men may be forced to be Guardians; Women cannot be Witnesses in criminal Causes. All Words against *good Manners*, (tho' not injurious) are actionable or punishable, &c. And these Laws

(a) Marantzæ spec. Aureum de Appellationibus, Num. 27. cum seqq.

(b) 1 Inst. 294. a.

may be defended with plausible Reasons. But our Lawyers have as good Reasons on the contrary ; and our Superiors will never endure that you should set up unknown Rules to govern the Property of *Englishmen*, or that our Rights should be determin'd by any other Laws than our own. Your Chancellor's Court subsists in subordination to His Majesty's Court of *Chancery*, by the express Words of your Statutes. *That* is governed by the *Jus equi & boni*, with a regard to the *Maxims* of our *Common Law*, and cannot be presumed to favour any strange Laws amongst you, especially where they do not immediately tend to the advancement of Religion and Learning.

I must therefore conclude, That (when your Statutes are silent) a mixture at least of both Laws must be admitted into your Court, *viz.* the summary way of proceeding by the Civil Law in point of *Practice*, and the Equity and Reason of the Civil Law against *strict* Common Law ; as in the Case of *Forfeitures* and *Acci-*
HCU 2
dents,

dents, or in Points *undetermined* at the Common Law; as such Equity governs in our *Chancery*. But, methinks you should prefer the Common Law, where the Civil Law is out of *use*, or when those two Laws *thwart* each other, particularly in Trade, or in their Fundamental Maxims. *Nolumus Leges Angliæ mutari quæ hucusq; usitate sunt & approbate*, 20 H. 3.

THE *Civilians* beyond Sea think it as scandalous to be ignorant of the Laws and Customs of their own Country as of the *Roman Law*, and observe their own Customs in the first place; and your (a) Statutes suppose that the *Civilians* bred amongst you should be learned in our Laws too, and in all probability for the same end and purpose. Dr. *Ridley*, *Cowell* and *Cosens*, &c. those famous *Civilians*, had become as if they had never been born, (which will be the Fate of some of their Children after them) if they had not distinguished themselves by their Skill in the Laws of *England*.

(a) Tit. 7. par. 2. & sic per Statut. Acad. Cantabr.

SUCH a Regulation of your Court, tends only to reduce it to its true Constitution, whereby the *Civil Law* might be made more useful to the Publick, and the Knowledge of our *own* Laws advanc'd with it, to the Benefit of the young Scholars that attend the Court, and of all others that are concerned in it.

HAVING now given some Reasons why the *general* Knowledge of the Laws of *England* should be studied in the Universities, together with a Hint of a *Method* how you may direct your young Scholars to enter on that Study, as also a way to *improve* in it; I am not without hopes but that my Proposal may take effect upon some of the most industrious and ingenious part of the young Gentlemen; tho' at present it may be subject to variety of Opinion and Censure of others, especially of those who are grown old in mistaken Notions of useful Learning. I sincerely profess, that I have been long perswaded that such a Knowledge may prove hereafter

ter for the Service of the King, the Honour and Interest of the Clergy, and consequently for the Honour and Interest of the Universities. Excuse therefore the Presumption of sending my Thoughts to you on this Subject, because this Proposal is well intended, proceeding from my hearty Wishes for your Prosperity.

I am, with all Esteem, (for your Readiness and Industry in promoting the publick Good, and on many other Accounts)

REVEREND SIR,

Your most Obliged, and

Humble Servant,

FINIS.

